

MAY 21 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendments of Parts 32, 36, 61,)
64 and 69 of the Commission's Rules)
to Establish and Implement Regulatory)
Procedures for Video Dialtone Service)

FCC MAIL BRANCH
DA 93-463 / RM-8221

COMMENTS OF
THE INDIANA UTILITY REGULATORY COMMISSION AND
THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF

On April 8, 1993 the Consumer Federation of America and the National Cable Television Association filed a petition (Joint Petition) with the Federal Communications Commission (FCC) for the commencement of a rulemaking proceeding to establish cost allocation rules for video dialtone service, and for the establishment of a Federal-State Joint Board to recommend procedures for separating the cost of local telephone company plant that is used jointly to provide telephone service and video dialtone. Comments on this Joint Petition are to be filed on or before May 21, 1993. The Indiana Utility Regulatory Commission (IURC) and the Michigan Public Service Commission (MPSC) Staff submit the following comments in support of the Joint Petition.

As is pointed out in the Joint Petition, when the FCC authorized local telephone companies to offer video dialtone service, it left critical implementation issues unresolved. Rather than adopt comprehensive video dialtone-specific rules to govern such matters as jurisdictional separations, cost allocation, pricing, and consumer safeguards, the FCC apparently believed that it could address these issues as they arose, in the context of applications for authorization to construct video dialtone facilities.

The IURC and the MPSC Staff agree with the Joint Petitioners that the FCC's ad hoc approach will not work. Pending before the FCC are three video dialtone applications which, if granted, will force basic ratepayers in those three affected service areas to bear the costs of millions of dollars in fiber optic lines being installed for video services and will undermine fair competition in the video marketplace. An analysis of these applications, which highlights the risks to consumers and competition, is presented in the Joint Petition and the specific concerns are expressed as follows:

- New Jersey Bell proposes to assign one hundred percent of the costs of new fiber trunks to telephone ratepayers -- even though it is abundantly clear that only a small fraction of these new facilities will be used for telephone service. The overwhelming proportion of this capacity will be used for video dialtone service.

- According to a new study by Hatfield Associates, appended to the Joint Petition, telephone ratepayers nationwide could pay billions of dollars in unjustified rate increases each year unless effective cost allocation rules are implemented.
- The pending applications demonstrate that the threat of cross-subsidy is present with respect to video dialtone offerings, notwithstanding earlier speculation that existing regulatory safeguards and the purportedly eroding monopoly power of local exchange carriers had reduced that threat.

The IURC and the MPSC Staff agree that the flaws in the pending applications, as highlighted in the Joint Petition, are a direct result of the lack of cost allocation rules for video dialtone. In the absence of a clear set of standards to ensure that ratepayers do not subsidize the substantial costs of constructing and operating video dialtone facilities, there will doubtless be more applications that attempt to exploit this hole in the regulatory scheme. Safeguards developed on a case-by-case basis in reaction to flawed applications cannot effectively address what is clearly a generic problem. Moreover, the process of developing conditions for each new application unnecessarily consumes considerable governmental and private resources.

The IURC and the MPSC Staff agree that the time to institute a comprehensive proceeding to address questions with respect to jurisdictional separations, cost accounting, access charges, and other consumer and competitive safeguards in the video dialtone context is long overdue. The IURC and the MPSC Staff agree with the following points set forth in the Joint Petition:

- The FCC should refer to the 80-286 Federal-State Joint Board the issue of the proper allocation of plant used jointly for telephone and video transmission services as part of the comprehensive review.
- The FCC, in cooperation with the States, should adopt video dialtone-specific cost accounting rules to safeguard consumers and ensure fair competition.
- The FCC, in cooperation with the States, must determine the proper application of its access charge and price cap rules to video dialtone.
- The FCC should ask the Joint Board to adopt procedures for separating the costs of regulated and non-regulated video dialtone services.
- The FCC should adopt video dialtone-specific rules for joint marketing and customer privacy.

Such rules, if developed, will provide the necessary guidance to local exchange carriers that wish to offer video dialtone services. In addition, such rules will assist state regulators, consumer advocates, and others in their efforts to ensure that the implementation of video dialtone does not come at the expense of basic ratepayers or fair competition.

The IURC and the MPSC Staff agree with the Joint Petitioners that until completion of the rulemaking proceeding, pending video dialtone applications should be held in abeyance and the FCC should refrain from accepting any new video dialtone applications. At a minimum, approval of any video dialtone application prior to the adoption of the basic safeguards we are requesting should be conditioned on compliance with those safeguards.

The IURC and the MPSC Staff support the Joint Petitioners request that the Part 32 accounting rules, the Part 36 jurisdictional separations procedures, the price cap rules established under Part 61, Part 64's separation of basic and enhanced services, and Part 69's access charge procedures must all be examined, and in many cases revised to accommodate video dialtone.

The FCC should require the 80-286 Federal-State Joint Board to determine, within twelve months, the proportion of video dialtone plant to be assigned to telephone service, and thereby subject to the separations process. As is pointed out in the Joint Petition, the FCC has already determined that the basic video dialtone platform is an interstate service. While video dialtone revenues will be treated as interstate, however, the costs of subscriber loops used jointly for video dialtone and telephone service will be allocated disproportionately to the intrastate jurisdiction. Assuming that these costs are allocated between the interstate and intrastate jurisdictions under the current 25/75 ratio, the effect is to allocate to the states three-quarters of the loop costs and none of the associated video dialtone revenues. A critical part of the Joint Board's work will be in developing a formula for allocating the costs of subscriber loops and other non-traffic sensitive plant between the video and telephone services.

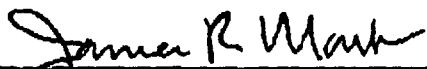
In a resolution adopted on July 24, 1991, the National Association of Regulatory Utility Commissioners (NARUC) supported the establishment of an administratively final Federal-State Joint Board to develop rules and regulations to govern broadband implementation plans and stated that the cost of deploying a nationwide broadband communications network should be allocated between the federal and state jurisdictions in an equitable and efficient manner.

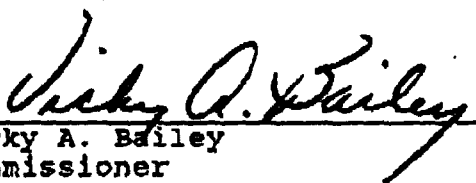
On March 4, 1992, the NARUC adopted another resolution concerning broadband network development. This resolution urged the FCC to address the questions of jurisdictional separations, and cost allocations in conjunction with the authorization of video dialtone and other broadband services. This resolution asks the FCC to define the principles it will use to classify video dialtone features as basic or enhanced, and that these principles be defined independent of application to any particular video dialtone approach.


In conclusion, the IURC and the MPSC Staff support the Joint Petitioners' request for a Federal-State Joint Board to determine the proportion of plant investment used jointly to provide video and telephone service that should be allocated to each service. To prevent basic ratepayers from subsidizing video dialtone, the FCC should revise the accounting, access charge, price cap, joint cost and joint marketing procedures. The FCC should also address other regulatory issues created by the authorization of video dialtone.

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and
THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF

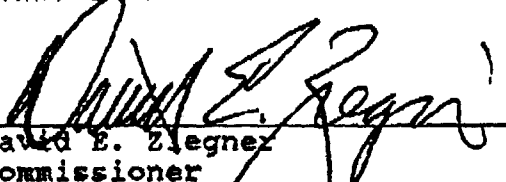
Respectfully Submitted,


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DATED: May 21, 1993